

ENVIRONMENTAL HEALTH DEPARTMENT

LAND USE AGENCY

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April 20, 2007

Ms. JoAnn Jaschke
Cal/EPA Unified Program
P. O. Box 2815
1001 I Street
Sacramento, CA 95812

Re: CUPA Evaluation and Progress/Update

Dear Ms. Jaschke:

Amador County Environmental Health is please to submit a report on the progress achieved in addressing the deficiencies identified in the September 8, 2006 CUPA evaluation date. Actions taken to address the deficiencies are attached to the identified deficiency by program element.

Unified Program Administration

Deficiency No. 4 - The CUPA does not have AEO forms incorporated into the Inspection and Enforcement Plan.

A draft Administrative Enforcement Order policy has been submitted to an Ad Hoc committee of the Board of Supervisors on Code Enforcement for review and policy development. Consultations with the District Attorney are underway. The goal is to establish an AEO procedure and policy through County Ordinance within 4 months. Copies of the draft policy flow chart and penalty matrix are attached.

Deficiency No. 5 – The CUPA does not have current technical staff trained in writing enforcement orders.

CUPA staff attended a three day class “Introduction to Environmental Enforcement” sponsored by the Western States Project on April 10-12, 2007.

Hazardous Materials Release Plans and Inventory Programs

Deficiency No. 7 – The CUPA Area Plan does not contain all the required elements.

Revision of the CUPA Area Plan was not conducted this quarter. It would be helpful to have the reviewing agency identify which elements of the Area Plan were omitted from the existing plan. Revision of the Area Plan will be started in the next quarter.

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Deficiency No. 9 – CUPA is not inspecting all businesses subject to the business plan for compliance every three years. Environmental Health Department staff attended 24 hour Hazardous Waste Operations (HAZWOPER) training in preparation for conducting hazardous materials business plan inspections.

Deficiency No. 10 – CUPA is not requiring businesses, subject to the hazardous materials reporting requirements to annually submit their hazardous materials inventory or certification statement. A follow up process to insure that the hazardous materials inventory or certification statement was not explained.

Review of certification statements, permit conditions, and permit fee payment is conducted as part of the annual permit renewal. Facilities that have not submitted certification statements, hazardous materials inventory statements, or have out dated hazardous materials business plans are not issued current permits and a notification letter is issued stating the reason for non renewal of the permit and describing the actions and time frame necessary to return to compliance and receive an operating permit. As of April 2007 there are 182 identified Hazardous Materials Business Plan facilities in Amador County and 166 active or in compliance facilities and 16 out of compliance facilities.

Upon approval of the AEO policy by the Board of Supervisors, noncompliant facilities will be notified of pending enforcement actions and the AEO policy implemented.

Deficiency No. 11 – CUPA is not requiring businesses, subject to the hazardous materials reporting requirements, to certify and review the update of the entire business plan every three years.

Review of existing hazardous materials business plans are conducted as part of the annual permit renewal. Facilities without dated business plans (3 years since last submittal) are requested to submit new updated plans, not issued current permits, and a notification letter is issued stating the reason for non renewal of the permit and describing the actions and time frame necessary to return to compliance and receive an operating permit.

California Accidental Release Prevention Program

Deficiency No. 12-- The CUPA has not established a dispute resolution procedure.

(see AEO policy development under Deficiency No. 4)

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Deficiency No. 13--The CUPA is not fully implementing the CalARP program for all stationary sources.

Amador County currently has one identified stationary source and active CalARP facility. The facility submitted an updated HMBP in June 1004 and has certified no changes to the plan in December 2005 and December 2006. An updated RMP report was submitted in June 2005.

Deficiency No. 14 --The CUPA has determined that stationary sources(s) may pose an accidental risk and has not requested the preparation and submission of all RMP(s).

See response to item 13.

Deficiency No. 15 -- The CUPA is not ensuring the owners/operators update the RMP or OCA as required.

See response to item 13.

Deficiency No. 16 -- The CUPA is not verifying updates and revalidation to the PHA or Hazardous review at least every three years.

An inspection of the CalArp facility will be conducted in 2007.

Deficiency No. 18 The CUPA is not auditing stationary sources

An audit of the CalArp facility will be conducted as part of the inspection in 2007

Thank you for your help and assistance in the addressing of the deficiencies in the Amador County CUPA Program. Please call me at (209) 223-6439 if you have any questions.

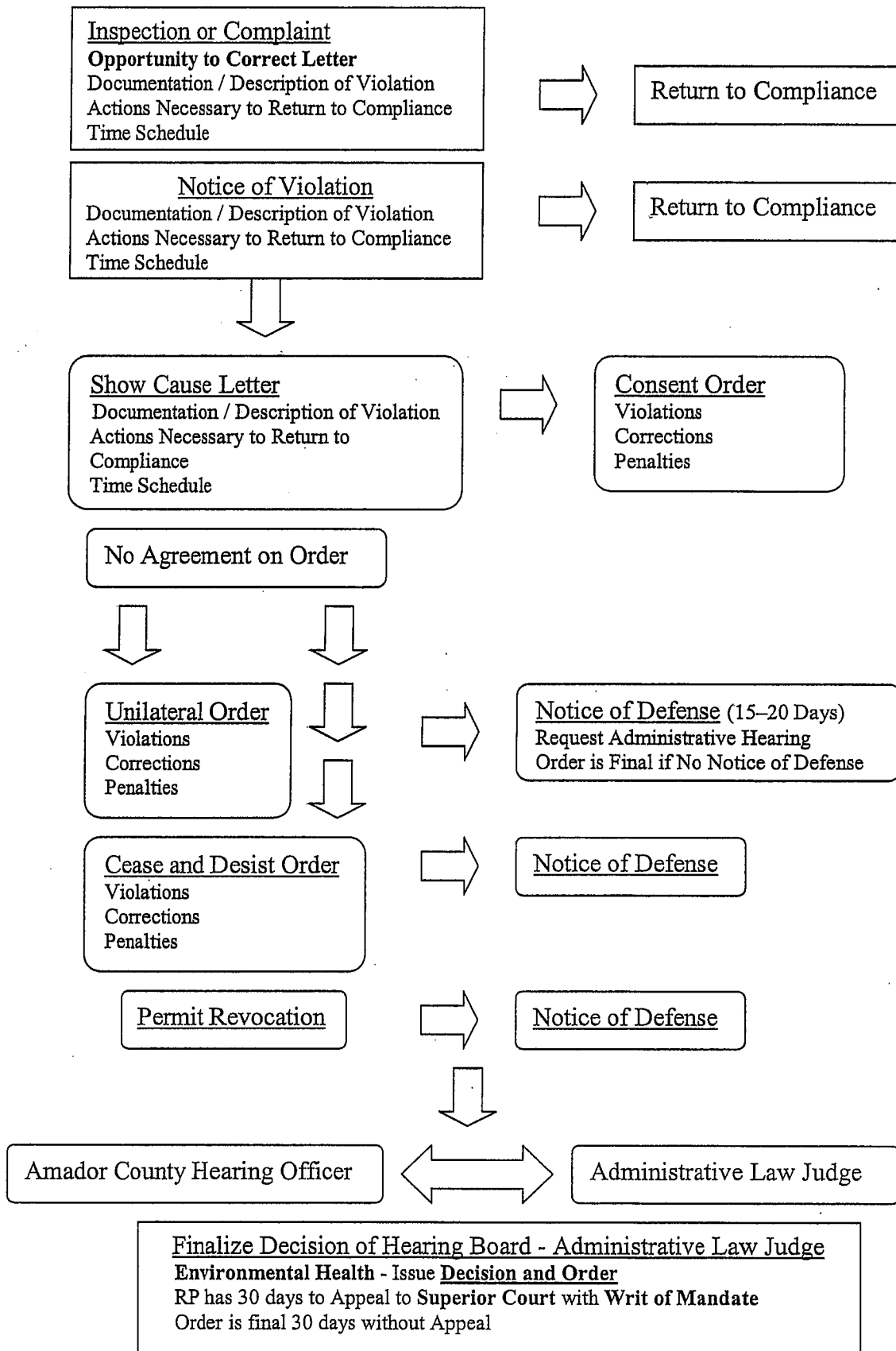
Very truly yours,



Robert Fourt, REHS
Amador County CUPA Program

RF:ew

Enclosure



Administrative Penalties

General Policies

Nature, circumstances, extent, and gravity of the violation.

Violator's efforts to prevent, abate, or clean up conditions posing a threat to public health or the environment.

The violator's ability to pay.

The deterrent affect of the penalty

Steps in Determining Penalties

Initial Penalty.

Degree of actual and potential harm

Major – the characteristics and/or amount of the substance involved present a major threat to human health or safety or the environment and the circumstances of the violation indicate a high potential for harm.

Moderate – the characteristics and/or amount of the substance involved do not present a major threat and the likelihood of harm from non-compliance is not high.

Minimal – the overall threat to human health or the environment is low.

Degree of Permit Violation

Major – Violation ignores or fails to comply with permit requirements

Moderate – Violation fails to comply with significant permit requirements, repeated minor violations of permit requirements

Minimal – Minor violations of permit requirements

Initial Penalty Adjustments

Violators Intent - Downward Adjustment

Violation beyond control of Violator (100% downward adjustment)

Violation occurred in spite of good faith efforts to comply with permit (0-50% downward adjustment)

Violation shows neither good faith effort nor intentional failure to comply (0% adjustment)

Violators Intent - Upward Adjustment

Violation the result of intentional failure to comply (100% upward adjustment)

Economic Benefit - Upward Adjustment

Violator realized economic benefit as result of failure to comply including avoided or delayed costs or increased profits (recover economic gain, up to statutory maximum)

Initial Penalty Adjustments (con't)

Multiple Violations and Multi Day Violations

Single penalty for multiple violations of same requirement at differing locations

Single penalty for multiple violations of same requirement on differing days if violation was not intentional

Days following initial violation may be calculated by determining 2% of the adjusted initial penalty times the number of days after the initial day if moderate violation.

Base penalty for a one day violation occurrence is adjusted initial penalty. Base penalty for multi-day violations is adjusted initial penalty for the first day of the violation plus the penalty for the additional days of the violation.

The total base penalty is the sum of all base penalties for all violations incurred at a given facility.

Final Penalty Consists of the Total Base Penalty with all Adjustments.

Degree of Actual and Potential Harm

Degree of Permit Violation

Violators Intent

Economic Benefit

Multiple Violations and Multi Day Violations

Violators Cooperation

Compliance History

Ability to Pay

Final Penalty Adjustments (con't)

Compliance History - Adjustment

The total base penalty may be adjusted upward or downward based on the facility's compliance history.

Consistent history of permit compliance (25 % downward adjustment)

History of non compliance (50 % upward adjustment)

Ability to Pay - Adjustment

Total base penalty may be adjusted if immediate payment of the final penalty would cause financial hardship to allow for extended payments. In cases of extreme financial hardship, consideration may be given to reduction in the total base penalty.

Maximum Penalties

Hazardous Waste. (H&SC Chapter 6.5). Violator shall be liable for penalties as provided in §25189.2 (\$25,000 per day, per violation).

Underground Storage Tanks. (H&SC Chapter 6.7). Violator shall be liable for penalties as provided in §25299 (no less than \$500 or no more than \$5,000 per day, per violation, per underground storage tank.)

Hazardous Materials Business Plan. (H&SC Chapter 6.95). Any violator shall be liable for penalties as provided in 25514.5 for an amount not greater than \$2,000 for each day in which the violation occurs, or greater than \$5,000 for each day in which the violation occurs for any business that knowingly violates after reasonable notice of the violation.

Above Ground Storage Tank Program (H&SC Chapter 6.65). Violator shall be liable for penalties as provided in §25270.5, of not more than \$5,000 for each day on which the violation continues. If the violator commits a second or subsequent violation, a penalty of not more than \$10,000 for each day on which the violation continues may be imposed.

Maximum Penalties (con't)

Failure to Report Unauthorized Spill or Release of Hazardous Material or Waste
(H&SC Chapter 6.95) Any violator shall be liable for penalties as provided in §25514.5 H&SC, not to exceed \$2,000 per day or greater than \$5,000 per day for knowing violations after reasonable notice of the violation.

Each business or facility and any employee, authorized representative, agent, or designee of the business or facility shall provide all state, city, county fire or public health or safety personnel and emergency rescue personnel with access to the facility. Any violator shall be liable for penalties as provided in §25514.5 H&SC, not to exceed \$2,000 per day or greater than \$5,000 per day for knowing violations after reasonable notice of the violation.

California Accidental Release Prevention (Cal-ARP) Program. Violations of H&SC Chapter 6.95, not less than \$2,000 per day in §25540(a) which the violation occurs. §25540(b) H&SC, knowingly violation after reasonable notice not to exceed \$25,000 per day

Initial Penalty Matrix

Initial Penalty Matrix – Hazardous Waste (per day of violation)

	Actual – Potential Harm	Major	Moderate	Minimal
Major Violation	\$25,000 to \$20,000	\$20,000 to \$15,000	\$15,000 to \$6,000	\$6,000 to \$2,000
Moderate Violation	\$20,000 to \$15,000	\$15,000 to \$6,000	\$6,000 to \$1,000	\$1,000 to \$0.00
Minimum Violation	\$15,000 to \$6,000			

Initial Penalty Matrix – Underground Storage Tanks (per day of violation)

	Actual – Potential Harm	Major	Moderate	Minimal
Major Violation	\$5,000 to \$3,000	\$3,000 to \$2,000	\$2,000 to \$1,000	
Moderate Violation	\$3,000 to \$2,000	\$3,000 to \$2,000	\$2,000 to \$1,000	
Minimum Violation	\$2,000 to \$1,000	\$1,000 to \$500	\$500 to \$0.00	

Initial Penalty Matrix (con't)

Initial Penalty Matrix – Hazardous Materials Business Plan (per day of violation)

<u>Actual – Potential Harm</u>	<u>Major</u>	<u>Moderate</u>	<u>Minimal</u>
Major Violation	\$2,000 to \$1,200	\$1,200 to \$800	\$800 to \$400
Moderate Violation	\$1,200 to \$800	\$800 to \$400	\$400 to \$200
Minimum Violation	\$800 to \$400	\$400 to \$200	\$200 to \$0.00

Knowing Violation Business Plan after Reasonable Notice (per day of violation)

<u>Actual – Potential Harm</u>	<u>Major</u>	<u>Moderate</u>	<u>Minimal</u>
Major Violation	\$5,000 to \$3,000	\$3,000 to \$2,000	\$2,000 to \$1,000
Moderate Violation	\$3,000 to \$2,000	\$2,000 to \$1,000	\$1,000 to \$500
Minimum Violation	\$2,000 to \$1,000	\$1,000 to \$500	<u>\$500</u>

Initial Penalty Matrix (con't)

Initial Penalty Matrix – Unreported Spills or Releases (per day of violation)

Actual – Potential Harm	Major	Moderate	Minimal
Major Violation	\$2,000 to \$1,200	\$1,200 to \$800	\$800 to \$400
Moderate Violation	\$1,200 to \$800	\$800 to \$400	\$400 to \$200
Minimum Violation	\$800 to \$400	\$400 to \$200	\$200 to \$0.00

Unreported Spills or Releases after Reasonable Notice

Actual – Potential Harm	Major	Moderate	Minimal
Major Violation	\$5,000 to \$3,000	\$3,000 to \$2,000	\$2,000 to \$1,000
Moderate Violation	\$3,000 to \$2,000	\$2,000 to \$1,000	\$1,000 to \$500
Minimum Violation	\$2,000 to \$1,000	\$1,000 to \$500	<u>\$500</u>

Initial Penalty Matrix (con't)

Initial Penalty Matrix – Cal-ARP Program (per day of violation)

Actual – Potential Harm	Major	Moderate	Minimal
Major Violation	\$2,000 to \$1,200	\$1,200 to \$800	\$800 to \$400
Moderate Violation	\$1,200 to \$800	\$800 to \$400	\$400 to \$200
Minimum Violation	\$800 to \$400	\$400 to \$200	\$200 to \$0.00

Knowing Violation – Cal-ARP Program after Reasonable Notice (per day)

Actual – Potential Harm	Major	Moderate	Minimal
Major Violation	\$25,000 to \$15,000	\$15,000 to \$10,000	\$10,000 to \$5,000
Moderate Violation	\$15,000 to \$10,000	\$10,000 to \$5,000	\$5,000 to \$2,500
Minimum Violation	\$10,000 to \$5,000	\$5,000 to \$2,500	\$2,500 to <u>\$1,000</u>

Initial Penalty Matrix (con't)

Initial Penalty Matrix – Above Ground Storage Tank (per day of violation)

<u>Actual – Potential Harm</u>	<u>Major</u>	<u>Moderate</u>	<u>Minimal</u>
Major Violation	\$5,000 to \$3,000	\$3,000 to \$2,000	\$2,000 to \$1,000
Moderate Violation	\$3,000 to \$2,000	\$2,000 to \$1,000	\$1,000 to \$500
Minimum Violation	\$2,000 to \$1,000	\$1,000 to \$500	\$500 to \$0.00

Above Ground Storage Tank (second or subsequent violations)

<u>Actual – Potential Harm</u>	<u>Major</u>	<u>Moderate</u>	<u>Minimal</u>
Major Violation	\$10,000 to \$6,000	\$6,000 to \$4,000	\$4,000 to \$2,000
Moderate Violation	\$6,000 to \$4,000	4,000 to \$2,000	\$2,000 to \$1,000
Minimum Violation	\$4,000 to \$2,000	\$2,000 to \$1,000	<u>\$500</u>

Final Penalty Adjustments

Violators Cooperation - Downward Adjustment

Violator exceeded minimum requirements in returning to compliance (25 % downward adjustment)

Violator demonstrated a cooperative effort (No adjustment)

Violators Cooperation - Upward Adjustment

Violator failed to cooperate, delayed, created unnecessary obstacles to achieving compliance, or failed to meet compliance requirements. (25 % upward adjustment)

Violator intentionally failed to return to compliance or allow cleanup operations to take place, does not include refusal to allow inspections (50 % to 100 % upward adjustment)

State Response to the corrective actions taken by Amador County's CUPA

Response to April 2007 update

Previously Corrected Deficiencies: 1, 2, 3, 6, 8, 19, 20, 21, and 22

Deficiencies Corrected with this update: 5, 13, 14, 15, 16, 17, and 18

Remaining Deficiencies: 4, 7, 9, 10, 11, and 12

Unified Program Administration

- 4. Deficiency:** The CUPA does not have AEO forms incorporated in their Inspection and Enforcement Plan.

Cal/EPA Response: Cal/EPA and DTSC are satisfied with the progress the CUPA is making towards correcting this deficiency and will continue to monitor the progress via deficiency progress reports. The CUPA may not need to obtain the Board of Supervisors approval to put a process in place, only to use it.

Hazardous Materials Release Plans and Inventory Programs

- 7. Deficiency:** The CUPA's Area Plan does not contain all the required elements.

Cal/EPA Response: Please contact Brian Abeel with the Governor's Office of Emergency Services (OES) to discuss the elements that were missing from the Area Plan. This deficiency will be corrected when OES has confirmed the Area Plan addresses the elements of title 19, sections 2722 through 2728.

Hazardous Material Emergency Preparedness (HMEP) grant funding is available for supplementing the area plan update revision costs. For information contact Michael Warren, OES Fire & Rescue Branch, Hazardous Materials Unit, Grant Administrator, by phone at (916) 845-8772, or by email at Michael.Warren@oes.ca.gov. HMEP information can be accessed at OES' website: www.oes.ca.gov.

- 9. Deficiency:** The CUPA is not inspecting all the businesses subject to the business plan program for compliance at least once every three years.

Cal/EPA Response: Cal/EPA and OES consider this deficiency to be in progress of being corrected. The CUPA shall report their progress of meeting the Business Plan frequency in the next deficiency progress report, and continue with the efforts being made to correct this deficiency. OES would like to oversee one or more of the Agricultural Commissioner inspections.

- 10. Deficiency:** The CUPA is not requiring businesses, subject to the hazardous materials reporting requirements, to annually submit their hazardous material inventory or certification statement.

Cal/EPA Response: Cal/EPA and OES are satisfied with the progress the CUPA is making towards correcting this deficiency. We will continue to monitor the CUPA's progress for correcting this deficiency via deficiency progress reports.

- 11. Deficiency:** The CUPA is not requiring a business to certify the review and update of their entire business plan every three years. To correct this deficiency, the CUPA will ensure that each handler reviews the business plan, submitted pursuant to subdivision (a) or (b) at least once every three years after the initial submission to determine if a revision is needed and shall certify to the administering agency that the review was made and that any necessary changes were made to the plan. A copy of those changes shall be submitted to the administering agency as a part of that certification.

Cal/EPA Response: Cal/EPA and OES are satisfied with the progress the CUPA is making towards correcting this deficiency. We will continue to monitor the CUPA's progress for correcting this deficiency via deficiency progress reports.

California Accidental Release Prevention Program

- 12. Deficiency:** The CUPA has not established a dispute resolution procedure.

Cal/EPA Response: The information provided does not satisfy all of the required elements of Title 19, section 2780.1.